

**Minutes**  
**Beaches and Shores Advisory Committee**  
**Thursday, November 6, 2014, 9:00 a.m.**  
**Charlotte County Building Construction Services conference Room**  
**18400 Murdock Circle, Port Charlotte, FL 33948**

*\*\*\*Please note that one or more Charlotte County Commissioners may be in attendance at any meeting of the Beaches and Shores Advisory Committee\*\*\**

**Members Present**

Clifford Kewley, District 5, Chairman  
Jack Landis, Member-at-Large, Vice Chairman  
Tommy Brock, District 3  
Rich Parchen, District 4  
Robert Pierce, FL Shore & Beach Preservation Assoc.  
Dick Whitney, District 1  
Katherine Ariens, District 2

**Members Excused**

**Staff Present**

Commissioner Ken Doherty, District I  
Betty Staugler, UF/IFAS Extension Charlotte County  
Matt Logan, Charlotte County Engineering Division  
Gayle Moore, Recording Secretary

**Guests Present**

Michael Poff, Coastal Engineering Consultants  
Steve Reilly, Sun Herald

**Call to Order**

Chairman Clif Kewley called the meeting to order at 9:00 a.m. and led the group in the Pledge of Allegiance. The Recording Secretary called the roll and it was determined that a quorum was present.

On motion made and carried unanimously, the Minutes from October 2, 2014 were approved as received.

A change was made to the agenda order at the request of Mr. Poff.

**Citizens Comments**

None were offered.

**Commissioner Comments**

Commissioner Doherty noted that he was sitting in for Commissioner Deutsch who had a schedule conflict, and appreciated the opportunity to meet with this group. Commissioner Doherty raised the issue, reported by a citizen, of shallow water at Stump Pass, asking if the group had any suggestions regarding possible short-term solutions.

Mr. Poff spoke to the issue, noting that so far just one captain has reported the shallow water situation, as opposed to many calls coming in which would normally be the case; therefore, he said, it may be the issue of a displaced buoy. The Commissioner said that the call he was

referring to came from Cape Haze Marina; Mr. Poff also responded in terms of surveys made in August, which indicated that the flow in the Pass was reduced but still efficient, conditions not unexpected since it has been four years since the last dredging. He suggested that the County may want to have an interim survey completed to weigh against the reports; he asked boaters in attendance whether they had a similar experience; Mr. Landis reported no shallow water last weekend. Mr. Brock referenced recent weather conditions that may have been responsible for moving sand. Mr. Lach said he thought, based on his experience on the water this weekend, that it was likely the buoys that need to be moved. Further information was provided by Mr. Poff on the mechanics of moving or reinstalling the buoys. Mr. Whitney asked about the optimal depth; Mr. Poff responded that the "level of service" (LoS) for that area was matched to the average size of boats and there is currently 3 foot of draft being provided for and there would be a mean depth of 5 feet in the pass at all times. As to how often that LoS is not met, he noted that the depth should be especially good after a dredge cycle but due to the recent high-frequency harsh weather conditions, the dredging schedule has been moved up; this decade has had the highest frequency of storms of any prior decade. Commissioner Doherty suggested that he would report back that staff will be assessing the situation and making adjustments were appropriate.

Chair Kewley suggested that Mr. Poff continue with his update on Stump Pass; Mr. Poff indicated he had two very positive things to discuss. First, the State DEP and Florida Parks Service reviewed the draft documents which were submitted in advance of the official REI response and we have gotten quality feedback from the agencies on their preferences (such as options for the construction of the terminal groin at the south end of Manasota Key.)

There was also an email from our project manager with DEP confirming that the County will receive some State cost-sharing for next year's monitoring. We were already aware that there would be about \$100,000 in reimbursement funds; this DEP staffer asked that we send prior year's contracts to see if more money could be available, and then asked for additional info on post construction monitoring and other information including the BoCC meeting scheduled so he can come make his presentation. Mr. Poff provided additional details regarding this source of funding; he also indicated to the Commissioner that he and Mr. Logan may come to the Board on an emergency basis in order to have this source of funding secured.

Mr. Pierce asked about how the funds would be allocated in the future; Mr. Poff clarified that the funds are to compensate the County for the required monitoring on the existing permit after the 2011 event.

Further discussion ensued on the outstanding FEMA application and appeal process; Mr. Poff provided some background information on this matter to the Commissioner, explaining the source of the misunderstanding with FEMA (some gains that were not a result of the storms were factored in by FEMA on their finding of insufficient damage). Because of big storms (like Sandy) and major claims, they are pushing back on all claims now. Mr. Poff suggested that Kelly Shoemaker would likely have more complete information. Commissioner Doherty discussed deadlines for material to get onto the Board's agenda for December 9<sup>th</sup>.

Mr. Pierce asked what the two alternate structures were that DEP had suggested; Mr. Poff described the sloped structure vs. a notch in the structure. He pointed out that the sloped structure would be more difficult to modify but a better approach. Chair Kewley asked if the park authorities had been consulted on the design; Mr. Lach indicated that they are on-board with the slope design. Mr. Poff indicated that the official term for the structure would be a "low crested permeable terminal rock groin."

There was a brief discussion of an alternate meeting date for January, when the standard meeting day would be New Years Day. It was agreed that the recording secretary would poll the members with the available options after confirming room availability.

Chair Kewley next introduced Ms. Betty Staugler who was to speak on the subject of Florida anchoring rules, which is tied in to the issues at Chadwick Cove.

Ms. Staugler referenced a publication from the University of Florida's Law School entitled *Anchoring Away*; March 2011 is most recent edition but a newer version will be available soon. This publication reviews and summarizes Federal and state rules, and compares various state rules to one another.

In terms of anchoring in Florida, Ms. Staugler provided the following information: First of all, navigation is a federal right and anchoring is a right incidental to navigation; therefore, states and local governments cannot interfere with those rights, with some exceptions for things related to safety. The bottom waters belong to the state, and can regulate those that they own; in Charlotte County, there is a lot of privately-held submerged lands / bottom waters among the state lands, which complicates matters.

Because the state interprets the right to anchor as being part of the rights of navigation; with the exception of local regulation pertaining to submerged lands lease for managed moorings or for a marina or for putting in a dock, you cannot regulate informal anchoring in the state of Florida. This was made abundantly clear in 2009 when the Florida Statutes were updated and it was included that the state had authority over the submerged lands and local governments would not enact ordinances to regulate anchoring. Ordinances then in place were rendered null and void by that change in legislation; this affected Punta Gorda's ordinance imposing a 72-hour limit on anchoring within their jurisdiction. This rule change precipitated the pilot managed mooring program; however, because local regulation stops at the border of the managed mooring, if a vessel goes one inch outside the managed mooring, local regulations do not apply. The state set up pilot programs around the state to address local governments' desires to regulate inside and outside managed mooring areas, to address pump-out and other issues. The pilot program has been extended through July 2017.

Recently, some local governments have pushed to create state legislation that would allow local governments to regulate anchoring. This has produced pressure on FWC to move forward with enacting some form of local government regulation. There have been some public meetings in the fall, and put out a survey, outlining various proposed concepts of which two are of substantial interest: 1) a vessel may not anchor within 150 feet of a managed mooring boat ramp or other launching facility; 2) a vessel may not anchor overnight within 300 feet of residential waterfront property. Local governments did not attend these public meetings in force, it was far better attended by individual boaters. There have been no results from this for the present.

In terms of Chadwick Cove, Ms. Staugler pointed out that Charlotte County could establish a managed mooring, by meeting the usual requirements (submerged land lease, provide for pump out, etc.) But, as of today, anyone can go there and drop anchor. This is somewhat like Lee Co. and she indicated that she had touched base with Lee County staff person Justin McBride about their approach. Their managed mooring program was originally intended to address boat storage for boaters who live on-shore; that "moved" the problem to more problematic waters. Lee County has addressed these issues through their abandoned vessel program, but if a boat is in navigable condition, then they can drop anchor. Fort Myers Beach was addressing boats not using pump-out facilities, and that was more successful but also leads to "moving the problem" around within their county outside the managed mooring area.

Mr. Whitney asked what the minimum size of a managed mooring field would be (the smallest size permitted) because Chadwick Cove is small. Ms. Staugler pointed out that DEP reviews the plans for managed mooring fields ensuring that there would be sufficient turning radius which in turn determines how many mooring balls can be placed. She also noted that there would be a cost/ROI consideration; you can anchor more boats than you can put into a managed mooring field. Mr. Poff agreed, also noting that the size of the vessels counts as well, also water depth.

In response to a question raised, Mr. Brock noted that Chadwick Cove is not marked as a navigable waterway. Without any markers, Ms. Staugler pointed out, boaters can go where they want, and although they may be impeding navigation, it can't be regulated. Mr. Brock said that with establishment of the no wake zone, the area got on the charts; that's how they create an anchorage in the boating industry, and that's what boaters respond to. Further discussion ensued on this point.

Chair Kewley asked whether it is illegal and enforceable if boats anchor in sea grass; Ms. Staugler said not unless they touch bottom – anchor damage doesn't count.

Ms. Ariens asked about pumping waste overboard; Ms. Staugler noted that dumping is prohibited in state waters, but that the person has to be caught in the act by the Sheriff or Coast Guard who have the right to board and ask to see functioning tanks/valves. However, they can only board if the vessel owner is present, and they may be outside the cabin only, unless required to observe functioning of the facilities.

Chair Kewley posed a question to Committee members, looking at anchoring as opposed to mooring fields. The situation in Chadwick Cove is that people are living there evidently not complying the law in terms of pump-outs; in the absence of a mooring field, however, is it open to regulation if people are there as transient boaters who have tied up for a day while visiting restaurants, etc.? Mr. Brock noted that most people don't stay long – that's why they have a boat, to be able to move around; but there are other problems, including dangers to existing private docks, environmental issues, the pump-out issues. These days, a boat's holding tank is completely separate and you have to pump it overboard ON PURPOSE; the older boats are a problem, stuff just goes right on through. But Mr. Brock questioned if there is any state law about meeting current standards for holding tanks; because if there were, then law enforcement could get rid of the scoff law live-aboards in Chadwick Cove because the biggest problems are all old vessels.

Further discussion ensued on what the law actually covers and what can actually be done; Ms. Staugler noted that storage boats can be boarded because vessel owner will not be aboard. Storage boats eventually become derelict in some way and then the Derelict Boat laws apply. Ms. Ariens asked what the time frame is for a vessel to become a "derelict" vessel; Ms. Staugler responded that the designation is not about time at anchor, it is about the condition of the boat – if it is not considered navigable under the state definition, then it is derelict or abandoned.

Ms. Staugler also noted that the County's abandoned vessel program tries to work with boat owners first; she spoke about the program for removing these vessels, and what ultimately happens to the vessels. Further discussion centered on what an abandoned or derelict vessel is, including whether it is "capable of navigating under its own power" (which means sails for sailboats and operational engines for other vessels); additionally, the boat cannot be taking on water or violating sanitation laws.

Ms. Ariens sought to clarify the actual problems with Chadwick Cove: That the vessels are an eyesore? That there is damage to the sea grass? That there is illegal dumping? Mr. Brock said

he felt that it involved all of those issues. Ms. Ariens felt that these were things the Committee could address, and that sea grass seems easiest; the pump out issue is still the biggest issue.

Mr. Brock spoke further on the subject of the mooring balls: It does give everyone a place to tie up, they don't drag. However, in some places, people come in and stay for an extended period and building their own mooring facilities, which can be a hazard to navigation. Ms. Staugler said that the county is removing those vestiges; they are unpermitted. This raised the question whether it is better for these folks to be anchored or on a mooring ball that gets left behind and becomes a danger to boating. Some additional discussion ensued on this point including the possibility of using Site Scan.

Chair Kewley thanked Ms. Staugler for her contributions on the issues; Mr. Brock summarized the discussion as: We want Ms. Staugler's assistance to learn the law on those issues (e.g., standards for sanitation devices that pre-date current regulations) and Ms. Ariens indicated she wanted to learn whether there are successful programs anywhere nearby we could go talk to.

Ms. Staugler mentioned the law school having put together a publication that covers much of this information; she indicated she would send a link to the group, since this was a good starting place for information. She noted that one discovery of the study is that a mix of live-aboards and transients enforce good behavior on one another.

Discussion ensued of the effort by City of Punta Gorda to establish a mooring field, which was not so successful; this was attributed to the location which was outside the aquatic preserve for ease of permitting. Ms. Ariens asked if that wouldn't be an issue regarding Chadwick Cove as well, since that is an aquatic preserve also. Mr. Poff agreed that it makes a difference but he also noted that the fact people have already been there for a period of time would make permitting easier than if it was "virgin territory".

Mr. Landis renewed his request for information on costs of mooring fields per accommodation. Mr. Poff indicated that mooring spaces would run about \$3,500-4,000 each, all appurtenances considered. He indicated that he wouldn't estimate cost for permitting a new facility because he would be bidding on the work; he suggested that the group look at what Punta Gorda had recently paid, which would be a rough guide. He also cautioned that until we know what the surface is, sand or rock or both, it wouldn't be practical to make an estimate.

Ms. Ariens questioned the recent meetings on legislative changes requests, specifically how this would be known to local lawmakers so they could plan to attend; she also questioned how suggestions for rules and law changes should be conveyed to our state representative, or whether they would already be aware. Chair Kewley suggested there was a need to compile the information and then send letter to our State Representative. Commissioner Doherty noted that the Commission will be discussing legislative priorities at the next Board meeting to prepare for the delegation meeting with our Senators and Rep. Roberson on Dec. 4<sup>th</sup>. He suggested that if the Committee has recommendations, to move quickly to get that information to the Commissioners; that information should be communicated through Commissioner Deutsch or Assistant County Administrator Kelly Shoemaker. Further discussion ensued including what the wording of a motion should be; Mr. Landis suggested the most effective path would be to have one thing and state it succinctly rather than a taking a shotgun approach, and Commissioner Doherty agreed.

Mr. Whitney proposed the following language: In our concern for the environment and the safety of everybody involved at Chadwick Cove, we specifically would like to have a managed mooring field which would prevent damage to the sea grass and mangroves by anchor dragging and by derelict boats; we'd like to see those vessels in the area have proper anchor lights and

anchor balls; we'd like to see that they have proper holding tanks or if they do not have a holding tank, make sure that the waste is properly disposed of; to discourage relocating vessels to avoid supervision when a mooring field is established; and to allow no vessels within 300 feet of residences.

Mr. Brock seconded the language proposal; the motion passed unanimously. It was determined that the Chair was to write a letter to the County Commission, officially conveying this language.

Further discussion ensued on Committee members obtaining the existing Anchoring documents; Ms. Staugler indicated she would send a link to the documents online, but that hard copies are not currently available except perhaps at boat shows. It was also noted that Committee members could sign up on the FWC website to receive email notices of everything that they do, such as the meetings mentioned earlier.

Chair Kewley next called for Citizen Comments on the foregoing discussion. Ms. Carole Leonard, resident of Englewood, suggested the group ask the Legislature to address the issue of removing impediments to local enforcement such as the one which specifies that the vessel owner has to be present to board boat, or that the officer has to see the infraction. Ms. Staugler suggested that these are the same as federal protections on law enforcement entering into your home. Ms. Leonard suggested time limits could be imposed on anchoring; Mr. Staugler explained that live-aboards can be regulated but she doesn't have the language with her. Chair Kewley noted that progress is being made out there.

Ms. Leonard offered a second item, concerning Mr. Lach's statement at the last meeting that he would like to discuss the Super Boat races of the past spring. Mr. Lach said that while the super boat were nice and well attended by boat, he wonders if that is really the right time of year to do it. That is already the busiest time for tourism when people are already here; we would benefit more by attracting people during a slack time. Chair Kewley noted that the organizers are at the mercy of the boats having other venues that they have committed to, and Ms. Ariens noted that's the end of their season. Commissioner Doherty indicated the Board would be discussing the races at their next meeting. Mr. Lach reiterated that while the race was fun, it didn't really bring anything to the area businesses; a lot of empty buses going back and forth on race day, a lot of people on boats watching who did not come to shore. He again suggested doing it at some other time of year. He also indicated that from a park standpoint, the empty parking lot was a revenue loss and probably businesses did no better than they would have done without the race. Mr. Brock indicated he did speak with a couple of business owners who agree with Mr. Lach's position.

#### Member Comments

Ms. Ariens raised an issue regarding the upcoming joint meeting, and concerns about how it goes. She said that Mr. Dryburgh had suggested that it be turned into a workshop, and then individual committees could vote on subjects developed there at their next usual meeting. Commissioner Doherty said there had been a discussion of the benefit of the joint meeting being formatted as a workshop, with no voting, so that it could be controlled better; especially considering what happened last year, which was very difficult to manage.

Ms. Staugler commented on the Sea Grant statewide conference which will next be held in Tampa in conjunction with the Working Waterfronts Conference; she felt it might be worthwhile sending at least one person although it would be relatively expensive. She noted that it is the types of topics the Committee is interested in that get discussed. Further discussion ensued on

the conference, its cost and value. Mr. Landis suggested sending a person who is on both BSAC and MAC. The conference is late last year, so there is plenty of time to plan for it.

Commissioner Doherty expressed his appreciation for the efforts of the Committee members.

Motion to adjourn was offered by Mr. Pierce, seconded by Mr. Whitney; the meeting adjourned at 10:44 a.m.

Respectfully submitted,

Gayle Moore  
Recording Secretary

Minutes Approved by

Clifford Kewley, Chairman  
Beaches & Shores Advisory Committee